IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2110 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

P S PRAJAPATI

Versus

OIL & NATURAL GAS CORPORATION LTD.,

Appearance:

1. Special Civil Application No. 2110 of 1999

MR PARESH UPADHYAY for Petitioner

MR KC THAKER for M/S TRIVEDI & GUPTA for Respondent

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 11/02/2004

ORAL JUDGEMENT

In this petition, the petitioner has prayed that respondent be restrained from effecting recovery of a sum of Rs.79,128=00, on the ground that through mistake excess payment was made to the petitioner towards Leave Fare Allowance ("L.F.A." for short). The respondent vide

Office Order dated 11th February, 1999, has directed the petitioner to deposit the said amount with F & A Section, ONGC, C&M Division, Baroda within fifteen days time from the date of the order.

2. It appears from the record of this petition that the petitioner who originally belonged to the State's service was on deputation with the respondent with effect from 25th March, 1996 while he was working as Mamlatdar. During his tenure on deputation as Mamlatdar with the respondent, the petitioner was promoted as Deputy Collector in Gujarat Administrative Services Class-I. His deputation continued in ONGC i.e. the respondent even in the promotional post. It also appears that while on deputation, the petitioner was governed by the Rules and Regulations that have been prescribed in the Resolution of the Revenue Department, Government of Gujarat dated 12th May, 1998. It further appears that the pay-scale of the petitioner was fixed at Rs.8,000=00 with effect from 1st January, 1998. It may be noted here that while on deputation it was open for the petitioner to exercise his option either to avail the benefits as per the State Government norms or as per the norms laid down by the respondent. The petitioner vide letter dated 13th May, 1998 opted for the Rules and Regulations of the ONGC.

2.1. It further appears that he had also exercised an option in the matter of leave travel concession in accordance with Clause 13 of the terms and conditions of the deputation fixed by the Government vide aforesaid Resolution. In the year 1998, the petitioner decided to avail the benefit of leave travel concession and applied for the same for the block year 1998-2001. Having regard to the fact that at that point of time, the basic salary of the petitioner was Rs.8,000=00, his request to sanction L.F.A. travelled by air was acceded to and it was granted to him vide Office Order dated 26th May, 1998. By virtue of this order, the petitioner was paid a sum of Rs.99,600=00 towards the air fare. It may also be noted here that the petitioner had decided to encash the said benefit since it was permissible and did not actually travel by air.

2.2. It further appears that the case of the petitioner was considered and it was decided by the competent authority vide minutes dated 13th January, 1999 that the petitioner was not eligible for air entitlement since the State Government employees pay revision was effected with effect from 1st January, 1996 and the ONGC's pay revision was due from 1st January, 1997.

According to the respondent, the petitioner was entitled to travel by train and he was entitled to receive a sum of Rs.20, 472=00 instead of Rs.99,600=00. Therefore it was decided to recover the balance amount i.e. Rs.79,128=00, on the ground that by mistake excess payment was made to the petitioner. As stated above vide order dated 11th January, 1999, the petitioner was called upon to deposit the said amount with the respondent.

3. The petitioner being aggrieved by the said order has approached this Court under Article 226 of the Constitution of India. Mr. Paresh Upadhyay learned advocate appearing for the petitioner has submitted that the petitioner opted to be governed by the norms of the respondent and he exercised his option in accordance with Clause 13 of the terms and conditions of his deputation. He was, therefore, in accordance with the norms of the respondent entitled to L.F.A to travel by air, since he was put in the pay-scale of Rs.8,000=00 with effect from 8th January, 1998. He has further contended that assuming that the petitioner was not entitled to receive L.F.A. (air fare), he was already extended this benefit which was not as a result of any fraud committed or misrepresentation made by the petitioner, the respondent now cannot be permitted to recover the excess amount from him. He has further submitted that the decision of the competent authority was dated 13th January, 1999 and the benefit was extended to him in the month of May, 1998, the respondent therefore, cannot be allowed to implement the decision with retrospective effect, as that would amount to penalizing him.

3.1. As against that, Mr. K.C. Thaker learned advocate appearing for the respondent has submitted that when there is a bona fide mistake committed by the respondent, the petitioner cannot be permitted to get the undue benefit thereof. According to Mr. Thaker, as per the terms and conditions, person drawing basic salary of Rs.7910=00 as on 1st January, 1992 was entitled to plane fare in a block year. However, so far as the petitioner is concerned, as on 1st January, 1992, he was not drawing pay-scale of Rs.7,910=00 and, therefore, he was not entitled to receive the aforesaid benefit. In fact, the said mistake has come to light within a short time and the recovery of the excess amount was sought to be made within reasonable time. Lastly, he has submitted that this petition has no merit and it deserved to be dismissed.

4. Having carefully gone through the record of this petition and also having carefully considered the rival

submissions, it clearly appears that the petitioner while on deputation with the respondent, in the year 1998 was paid LTC/L.F.A. on the basis of the plane fare which according to the respondent, he was not entitled to receive and demand for refund of Rs.79,128=00 was made. So far as the first submission of Mr. Upadhyay is concerned that the petitioner was entitled to receive Rs.99,600=00 towards the L.F.A., it cannot be accepted. The petitioner opted for the Rules and Regulations in this behalf, framed by the respondent. The affidavit-in-reply filed by the respondent shows that he was in the pay-scale of Rs.2,000-3,500=00 as Mamlatdar. With effect from 1st January, 1996, the pay-scale of the State Government employees came to be revised and the pay of the petitioner came to be fixed at Rs.7,300=00 in the year 1996 and in the year 1997 at Rs.7,500=00. It was only when he was promoted on probation, his pay, on promotion in the revised pay-scale was at Rs.8,000=00. Upon completion of one year, i.e. on 1st January, 1999, it came to be revised to Rs.8,275=00. It has been stated by the respondent on oath that as per the prevailing Regulations, the petitioner could have been entitled to receive plane fare as L.F.A. and also to encash the same instead of such travelling, provided he was drawing the basic pay of Rs.7,910=00 on 1st January, 1992. Admittedly that was not the position so far as 1st January, 1992 is concerned. In fact, the petitioner's basic pay came to be revised to Rs.8,000=00 only on 1st January, 1998, he, therefore, would not be entitled to receive the said benefit.

4.1. It is true that vide Office Order dated 26th May, 1998, the respondent itself had held that in view of his basic salary of Rs.8,000=00, he was entitled to have the L.F.A. for the block year 1998-2001 and for which a sum of Rs.99,600=00 was paid to him. When the error came to the notice of the concerned officer, the petitioner without any further delay was intimated to refund the excess amount. In the order dated 11th February, 1999, the concerned authority of the respondent i.e. the Deputy Manager (P & A) has stated as under :-

> "It was decided by the Competent Authority vide minutes dated 13th January, 1999, that the State Government employees pay revision is effected w.e.f. 1st January, 1996 and ONGC's pay revision is due from 1st January, 1997, deputationist is not to be considered for air Entitlement.
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> Therefore, Shri P.S. Prajapati, Laison Officer is directed to deposit Rs.79,128=00

(Rupees Seventy Nine Thousand One Hundred Twenty Eight Only) i.e. excess amount drawn towards L.F.A./OTHT during 1998 to F&A Section, ONGC, C&M Division, Baroda within fifteen days time under intimation to this office."

4.2. Thus, by this order, the petitioner has been called upon to deposit the excess amount within the prescribed time limit i.e. within fifteen days from intimation. The argument is advanced that no retrospective effect could be given to this decision. However, it is obvious that this order is being passed keeping in view the case of the petitioner alone. It is not the decision which is taken in respect of the class of deputationist and it cannot be termed as a policy decision. It is purely taken in view of the bona fide mistake that had been committed in the matter of grant of L.F.A. to the petitioner. It is needless to say that the mistake that has already been committed will come to notice only subsequently and such mistake can be amended only subsequently and whatever, action that has been taken due to such mistake will have to be corrected with retrospective effect. No change in the policy nor in the regulation, adversely effecting the service condition of the petitioner is brought about by the said decision.

4.3. Thus, the excess payment which was made in May, 1998, is sought to be recovered in the month of February, 1999. When the excess payment was made through bona fide mistake on the part of the concerned officer of the respondent and the said mistake came to the notice of the respondent sometime later, after the disbursement of the said benefit to the petitioner, it cannot be said that a decision to recover the excess payment was bad in law because it was being implemented with retrospective effect. The second limb of this submission of Mr. Upadhyay is that recovery effected pursuant to such decision would amount to penalizing the petitioner. One can understand if substantial period was allowed to pass and no one had bothered to notice the mistake and recovery was sought to be effected at a belated stage, it would have caused undue hardship to the petitioner for no fault of his. In such circumstances, decision to recover excesses can probably be equated with penal order. However, in the instant case, as can be seen, the decision to recover the said amount from the petitioner is taken almost within 8 to 10 months of the payment. At this juncture, it is pertinent to note that the petitioner has merely encashed this benefit and has not spent it to meet the travelling expenses.

4.3. In support of his contention, that when the amount even through mistake is paid, no recovery can be effected. Mr. Upadhyay has relied on the decision rendered by the Division Bench of this Court in case of I.C. Patel v. Gujarat Housing Board in Letters Patent Appeal No. 578 of 2000 in Special Civil Application no. 2196 of 1999 dated 4th April, 2001, and in particular on the following passage :-

> "However, recovery of the amount excess paid to the appellant at this point of time amounts to imposing a sort of penalty or punishment. The mistake was committed by the Board, for which the appellant should not be penalized. Recovery of the excess payment made to the appellant for no fault on his part appears to be wholly unjustified." (emphasis supplied).

4.4. This decision will not render any help to petitioner because on the facts, it differs with the present case. It appears from the judgment of the Division Bench that the appellant i.e. the concerned employee without his fault was paid salary on higher pay-scale for number of years and it was at a belated stage, the recovery was sought to be effected on the ground that through mistake the upgradation of higher pay-scale was given to the appellant. In view of such facts, the Division Bench came to the conclusion that recovery at such a belated stage would amount to penalizing the concerned employee. It has laid much stress on time factor. It is obvious that in that case even when the department had ample opportunity to notice its mistake, it had not realised it and had paid the salary on the basis of the upgraded pay-scale for years together. However, in the instant case, the decision has been taken within short time upon realisation of the mistake and this has been done within very reasonable time i.e. less than one year's time. The second decision that has been relied upon by Mr. Upadhyay is rendered by the learned Single Judge of this Court in the case of M.M. Patel v. State of Gujarat in Special Civil Applications Nos. 6006 to 6008 of 2002 dated 25th January, 2003. In the said decision, it has been observed by this Court as under :-

> 6. "On behalf of respondent - State, Mr. Mehta learned A.G.P. has not been able to show that the recovery was sought to be effected on account of granting higher pay-scale which was by way of fraud or other misdeed which can be attributed to

the employee concerned."

It has been further observed that :

7. "In view of the above, what is required to be noted is that there is no dispute on the point that pursuant to the decision of the higher authority the pay-scale in the higher grade was granted to the petitioner and after a period of about more than 4 years the decision is taken of cancelling the earlier decision and as a consequence thereof, recovery is sought to be effected." (emphasis supplied).

It has been then held that such recovery cannot be effected.

4.5. It is true that in the present case there was no allegation that the petitioner had committed any fraud or mislead the respondent to obtain the said benefit. However, this decision will not render any help to the petitioner in view of what has been observed in paragraph 7 thereof. From the record of this petition, it clearly appears that even the respondent through bona fide mistake has made this payment, but it has realised its mistake within a short time and recovery is sought to be effected almost immediately thereafter. In the aforesaid case, as can be seen from the contents of paragraph 7, there was considerable delay before cancelling the decision granting higher pay-scale to the concerned employee and in such circumstances, the Court has held that such recovery cannot be permitted to be effected. That is not the case here.

5. When in accordance with the relevant Rules, the petitioner is entitled to receive only the train fare, he cannot be permitted to retain the excess amount, which was paid through mistake by the respondent. The sum and substance of this is that the respondent is entitled to recover the said amount from the petitioner and it was well within its bound when it has passed the impugned order dated 11th February, 1999.

5.1. This petition is, therefore, required to be dismissed and it is hereby, ordered to be dismissed. However, before parting with the judgment, it is necessary to observe that since the payment was made to the petitioner for no fault on the part of the petitioner, it is just and proper that for repayment of

the said amount he should not be called upon to repay the amount at one stroke. It is, therefore, directed that if the petitioner so desires, he can make a representation to the respondent within a period of one month from the date of this judgment and upon receipt of such representation if made, the respondent shall, after granting him personal hearing, worked out easy installments to effect the recovery either directly from his salary or in any other manner. The respondent is directed to decide the said representation within a period of two months from the receipt thereof. In the meanwhile, no insistence for recovery of the said amount will be made by the respondent. This petition is, therefore, dismissed. Rule is discharged with no order as to costs. Interim relief stands vacated.

At this juncture, Mr. Upadhyay prays for extension of the interim relief which was granted earlier by this Court. Considering the facts and circumstances of the case, the request seems to be reasonable and it is granted. Interim relief is hereby, ordered to be extended upto 26th March, 2004.

[AKSHAY H. MEHTA, J.]

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